

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,797
)
Appeal of)
)

INTRODUCTION

The petitioner appeals the decision of the Department of Social Welfare denying payment for a low air loss mattress for her son under the Medicaid program. The issue is whether such a device is medically necessary for the treatment of the son's condition.

FINDINGS OF FACT

1. The petitioner is the mother of a thirteen-year-old boy, B., who suffered a traumatic brain injury when he was struck by a car while riding his bicycle in July of 1997. After a prolonged hospitalization and stay at a rehabilitation center, he was discharged for home care in December of 1997. He has made good progress since that time but is still severely incapacitated. He has muscle spasticity in his arms and legs which has limited any purposeful movement. He cannot walk, sit up, roll over, feed himself or perform any actions on his own. He is able to wiggle in bed and get himself into positions from which he cannot extricate himself. He is often incontinent of stool and urine and is unable to clean or care for himself.

B. is up in a wheelchair a good deal of the day and uses a stander for about an hour a day. He goes to school for two

and a half hours, three days per week. He always takes an afternoon nap before his physical therapy session. He goes to bed about 8-9 p.m. and is diapered at that time. He is not awakened for changing and turning during the night and often wakes up wet about 8:00 or 9:00 in the morning. He sleeps in a windowless room (though there are rooms with windows in his home, only the windowless room has been widened to accommodate his wheelchair) but is provided with a fan which moves air to his room from a window in a nearby hallway. Still he experiences profuse sweating, a condition which existed even before his accident. His mother has tried some non-prescription lotions and anti-perspirants with little success.

2. B. is susceptible to skin breakdown as is anyone who is unable to move in bed and who must deal with a good deal of moisture in the bed. To date, he has not had any problems with skin breakdown or pressure ulcers.

3. B. was discharged from the rehabilitation center in December of 1997 with a prescription for a "Ninth Wave Mattress" by his physician, who specializes in physical medicine and rehabilitation. He had used such a mattress in the rehabilitation center and it was prescribed in order to maintain proper hygiene and self care for his skin in order to prevent a skin breakdown. His physician felt that the air mattress would vary the pressure around the skin sites that were in contact with it and alleviate pressure on the

skin thereby maintaining capillary pressure in the skin and preventing the loss of blood flow which can cause skin breakdown and wounds. Although B's physician has not seen B. since his discharge from the rehabilitation center over a year ago, the physician believes, based on reports from those who attend B. and B's current pediatrician, that B. needs to continue using the mattress because he is still dependent on others.

4. The manufacturer's specifications regarding this mattress describe it as a true low air loss system consisting of a power unit and a mattress assembly. The mattress assembly contains an 8" thick plastic mattress with a removable waterproof padded cover. The mattress contains plastic cells through which air is passed by the power system at varying pressures. The air works to give pressure relief and to manage skin moisture. The manufacturer's literature states that the mattress is indicated primarily for the treatment of extensive and/or multiple Stage II, Stage III, and Stage IV pressure ulcers, specifically, (1) multiple Stage II and Stage III pressure ulcers on the trunk of the body when cutaneous blood flow is prolonged; (2) multiple Stage II, III, or IV pressure ulcers and (3) Stage III or IV pressure ulcers not responding to standard pressure relief therapy. Elsewhere in its literature, the manufacturer states that the mattress is suitable for pressure ulcer prevention.

5. In February of 1998, the Department notified the petitioner that it would not pay for a Ninth Wave mattress because it was not medically indicated for B's condition, since he had not developed any pressure ulcers. In April of 1998, the bed was removed and the Department provided B. with a new mattress which he tried out for about eight months, while the Department was performing a requested review of the case. That mattress did not fit his bed properly and caused a number of problems for B. including entanglement in the sheets and catching his limbs in cracks between the mattress and rails. The Department agreed that the mattress was inadequate and replaced it with a foam mattress which did fit the bed. The petitioner tried the bed for about a week and had it removed because she felt it was not eliminating moisture and sweat. Subsequently, with the agreement of the Department, B. was returned to the Ninth Wave pending a resolution of the matter.

6. B.'s current pediatrician did not prescribe the bed for B. He is involved in general pediatrics and does not treat any other patients with B.'s problems. At some point last year, Medicaid notified the petitioner that it would not pay for the Ninth Wave Mattress because it was not medically necessary. B.'s pediatrician agreed to try a different mattress but found the new mattress to be unacceptable because it did not fit. B. was able to squirm around on it and get caught in gaps between the mattress and

the rails. The plastic cover also created problems with moisture from urine and sweat. A home visit in February of this year by his pediatrician revealed that B. has not had any problem with skin breakdown or ulcers on either mattress. His pediatrician attributes this success to good family and nursing care and the Ninth Wave mattress, which he believes has caused less sweating, skin irritation and difficulties with positioning and transfers. He felt that B. had done well with this mattress and he would not recommend "going back to previous mattresses which have been tried without success."

7. B. is regularly visited by a home health care nurse who has over twenty years of nursing experience, most recently focussing on maternal and child health and obstetrics but which began with a thirteen year stint in acute care in a major medical center. She has treated many patients with traumatic brain injury, but does not claim to be an expert in this area. The home health care nurse has visited B. monthly since he was discharged to his home. She has observed that B. does sweat in the bed and is sometimes wet from urine and is unable to reposition himself. She has observed that the Ninth Wave mattress has a nylon cover which dries quickly and doesn't allow any wrinkles, shearing or crinkling up of the bedclothes. She is unfamiliar with this mattress other than through B.'s use of it. She does not believe there is an adequate way to prevent B. from

lying in a wet bed at night other than through this mattress. She knows he is double-diapered before bedtime but that is often inadequate. She does not feel a catheter would be good for him due to the risk of infection from these devices and his need to learn to urinate on his own. She has had B. tested for pituitary abnormalities (at the Department's suggestion) but none was found so she cannot explain his sweating. She feels that B. is at a high risk for pressure sores but agrees that to date he has not developed any skin breakdown regardless of which mattress he is on. She feels that this mattress works for B., although she has not seen any other TBI patients using this mattress.

8. B. receives physical therapy about four days per week. The physical therapy assistant who provides his therapy has observed him on the Ninth Wave mattress which helps her to slide him more easily, and helps him to pivot more easily. The dry surface also helps B. to pull himself up on the trapeze above his bed. She also felt that he looked less fatigued when he was on the Ninth Wave mattress because the other mattress he tried did not fit his bed and he often had restless struggles in it. While he was on the second mattress she had to request medication to control the increased spasticity he experienced which she attributes to fatigue. She has several other TBI clients but none of them uses a Ninth Wave mattress. She attributes their successes in staying dry to 24 hour nursing care.

9. The physical therapist who supervises the assistant originally saw B. five times per week and now sees him periodically. He believes that the Ninth Wave makes it easier for B. to do physical therapy and to maintain his position because there is no sticky wetness. A good mattress also helps to minimize fatigue making it easier for B. to participate in his physical therapy sessions.

10. The testimony given by the visiting nurse, physical therapy aide and physical therapy supervisor are found to be credible to the extent that they describe that the Ninth Wave Mattress keeps the child from being wet and that he does better with his sleep and physical therapy when he is in a dry and comfortable environment.

11. The Department hired a consultant to review this matter and to testify on behalf of its decision. The consultant is a nurse with a Master's and Ph.D. who is a certified expert in ostomy and wound care. In addition to considerable experience in the geriatric field, she has twenty years of experience in pediatric rehabilitation where she has held posts from staff nurse to director of nursing.

In those positions she supervised the care of twenty-five or so children with traumatic brain injuries who had incontinence and immobility problems similar to B.'s. She has published dozens of articles in nursing journals regarding wound care, pressure ulcers and incontinence and has given hundreds of lectures to professional groups

regarding her specialty which is skin breakdown, ostomies and tubes.

Before rendering an opinion in this case, she reviewed the medical records on B., talked with his mother and health care providers and visited the petitioner's home to observe B. and his surroundings. She also reviewed the manufacturer's literature with regard to the indications for the mattress.

It is her opinion that the Ninth Wave mattress is not medically necessary for B. because he does not have any pressure ulcers, has never had any pressure ulcers and is not likely to experience a skin breakdown due to pressure. As the Ninth Wave mattress is primarily a pressure reducing piece of equipment, it is not medically indicated for his condition.

B., in her opinion, needs management of his wetness, due to incontinence and perspiration, because it is the wetness itself rather than pressure that is most likely to cause a skin breakdown in his case. The standard of care for patients, including children, who experience bed incontinence is to seek out the source of the incontinence and to minimize it, a task which cannot be accomplished by any mattress. Incontinence is managed by shifting feeding schedules away from the evening to minimize night-time wetting and by external intermittent catheterization if needed. It was her opinion that this catheterization poses

no risk of infection or training difficulty for the future.

Endocrine and other tests should be done on B. to determine the source of his excessive sweating and prescription anti-perspirants, as well as 100% cotton clothing, should be used where appropriate. This is a methodology she used with the twenty-five bed bound pediatric TBI patients she nursed, all of whose incontinence and moisture problems were significantly reduced by such methods and none of whom experienced significant skin breakdown while using regular mattresses.

Finally it was her opinion that caregiver ease was not an appropriate criterion for prescribing such a mattress; the actual medical need of the patient should come first. B.'s medical need is management of his incontinence and sweating, not a mattress. While, the Ninth Wave mattress does, in addition to its pressure relief therapy, provide mechanisms for keeping the patient dry, she described this method of achieving dryness as a "Cadillac Type" relief of the symptom which is not in the patient's best interest insofar as it does not get at the root problem or foster independence in him (although it is not harmful to him), and which is not a standard and customary treatment for this common problem in traumatic brain injury patients. In all of her years of practice she has prescribed this mattress only twice for the treatment of patients who had developed multiple pressure ulcers on several body parts which could

not be treated in any other way because the wounds cut through the full thickness of their skin to the bone. She also prescribed this mattress only for the period of time it took to eliminate these sores. She has never before seen it used to treat or prevent wetness in a TBI patient. She agrees that the first mattress provided as an alternative by the Department was unsuitable because it did not fit the bed. The second alternative mattress was a suitable alternative but was, in her opinion, given an inadequate trial and was not used in conjunction with methods intended to limit or eliminate moisture.

12. B.'s physicians did not respond to or rebut the opinion offered by the Department's witness. B.'s mother stated that it was not easy to feed him earlier in the day because he has a busy schedule (therapies and school) which necessitates feeding at night. At the expert's suggestion, B's visiting nurse had an endocrine test administered to him with negative results. The Department has offered to pay for an extensive medical work-up on B. to determine the cause of his sweating which would require him to go to a hospital or rehabilitation unit for three or four days. The petitioner has declined this offer because she does not feel it would be good for her son to go back into the hospital again.

13. The testimony of the Department's witness as set forth in paragraph eleven is adopted as an accurate

description of the appropriateness of this piece of durable equipment for B.'s condition. This testimony is found to most accurately reflect the true facts because it was given by a person who is an expert in this field, who demonstrated a good knowledge and understanding of the facts in this case and who explained in detail why the mattress was not necessary to treat this medical condition and why other methods are standard, customary and of greater benefit to the patient. The opinions of the original rehabilitative physician are rejected as inaccurate because he has no personal knowledge of the child's current situation and does not address the assertions made by the Department that this mattress is not a customary or desirable treatment for the child's condition. In addition, his assertions that pressure was an issue for a pediatric TBI patient like B., who is out of bed for a good deal of every day, were rebutted in detail by the expert witness. The opinions of the child's current pediatrician are equally flawed because although they correctly focus on the need to keep the child dry and contain an opinion that this bed accomplishes that task, his opinion in no way addresses the points raised by the expert that the bed is primarily for the treatment of pressure sores, that this is not the standard and customary treatment for incontinence and that there are ways to deal with this problem that get at the root of it and are ultimately of more benefit to the patient. In addition, he

has freely admitted that he has little experience with and is not an expert in the needs of a child who is immobilized and incontinent due to a traumatic brain injury. The opinions of the visiting nurse that B. is at risk for pressure sores; that there is no way to keep B. dry short of use of this bed; and, that external, intermittent catheterization is harmful to B. is rejected based on the more detailed and knowledgeable testimony to the contrary on these subjects given by the Department's witness.

14. The following conclusions are supported by a preponderance of the credible evidence in this matter:

a. B. is not at an increased risk for sores caused by pressure and no medical necessity exists for him to either prevent or cure such sores at this time.

b. B. is at risk for skin breakdown caused by chronic wetness although he has never developed such skin breakdown regardless of which mattress he has used.

c. B. performs better in physical therapy when he has been able to get a good night's sleep and is not lying in a wet bed.

d. The usual and customary treatment for chronic wetness is assessing the cause of the wetness and eliminating or limiting the cause of such wetness through the use of feeding schedules, anti-perspirants, catheterization, cotton clothing and the like. No mattress is considered a treatment for chronic wetness.

e. The petitioner's feeding and activity schedules have never been adjusted to minimize overnight wetness, nor has he been thoroughly assessed for the cause of his sweating or had a trial of catheterization.

f. The Ninth Wave mattress is intended primarily for the treatment of multiple pressure ulcers over many parts of the body for short periods of time. It can also be used to prevent such sores. It acts by both eliminating pressure and wetness on the skin of the person using the mattress.

g. The Ninth Wave mattress is not medically necessary for either preventing skin breakdown in B., for insuring a good night's rest or for participating in physical therapy.

h. The first alternative mattress provided by the Department was not suitable for his needs because it did not fit his bed and caused discomfort and danger. The Department agrees with this assessment and provided a second foam covered mattress which did fit his bed and which was rejected prematurely without an adequate trial.

ORDER

The decision of the Department denying payment for the Ninth Wave mattress under the Medicaid program is affirmed.

REASONS

There is no doubt that the mattress requested by the petitioner provides a great convenience for all those persons who take care of the petitioner's son. A great deal of sympathy must go out to any family who has experienced such a devastating injury to a child and whose continuing care needs are undoubtedly both physically and emotionally draining for all.¹ The Medicaid program, however, does not provide financial assistance for durable medical equipment if it is purchased merely for ease or convenience. The regulations require that such an item also be "medically necessary". See Fair Hearing No. 15,662. The Medicaid regulations cover mattresses under the following circumstances:

Durable Medical Equipment

Payment may be made for durable medical equipment ordered by a physician for use in the recipient's residence other than a health care institution; i.e., other than in a mental hospital, general hospital, skilled nursing home, intermediate care facility or intermediate care facility for the mentally retarded (ICF-MR). A medical necessity form completed by the physician must accompany the claim submitted by the provider.

Durable medical equipment is defined as equipment which:

Can withstand repeated use; and

Is primarily and customarily used to serve a medical purpose; and

¹ In addition to B., the petitioner and her husband have four other children.

Is generally not useful to a person in the absence of illness or injury; and

is appropriate for use in the home.

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It is true, as the Board pointed out in Fair Hearing No. 15,662, citing Beal v. Doe, 432 U.S. 438 (1997) and others, that an opinion as to medical necessity is "a professional judgment made by the recipient's treating physician" and that there is "a presumption in favor of the medical judgment of the attending physician in determining the medical necessity of treatment." (Citing Weaver v. Reagan, 886 F.2d 194 (8th Cir. 1989)). However, the Board also pointed out in that decision that it is not bound by unsupported statements of necessity without any pertinent data to justify the statement.

In this case, the Department presented the impressive testimony of an expert witness which amply rebutted in terms of detail, knowledge, and experience the opinions of the treating physicians. No attempt was made by the petitioner to counter any of this witness' testimony. The expert's testimony not only rebutted any presumption due the treating physician but provided credible and weighty evidence leading to a conclusion not only that the mattress chosen for B. was not medically necessary and was outside the parameter of common treatment practice standards but also that its use might not be in the long-term best interests of the patient in that it did not identify and treat the root problem and

did not foster independence.

Even if it had been shown that the Ninth Wave mattress was appropriate as the best and easiest way to keep B. dry, it is clearly within the discretion of the state under the Medicaid statute to choose to provide medical services and equipment which adequately, if not perfectly, achieve their purposes. King by King, v. Sullivan, 776 F.Supp. 645 (D.R.I. 1991). It cannot be found in this case that the Department abused its discretion by denying this method to keep B dry, at least until more customary methods were tried first.

The petitioner makes a final argument that B., as a child Medicaid recipient, is entitled to preventive services (as well as disease treatment) under the Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT) program. She argues that even if the mattress is not currently treating B. for skin breakdown (because he hasn't had any) it is preventing him from experiencing a breakdown and should be covered pursuant to this program. The statute describing the EPSDT program provides as follows:

The term "early and periodic screening, diagnostic, and treatment services" means. . .[s]creening services. . .[v]ision services. . .[d]ental services. . .[h]earing services. . .[and] such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct and ameliorate defects and physical and mental illnesses and conditions discovered by the screening

services, whether or not such services are covered under the State plan.

42 U.S.C. § 1396d(r)(5)
(emphasis supplied)

Subsection (a) of 42 U.S.C. § 1396 provides for coverage of:

other. . . preventive, and rehabilitative services, including any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.

42 U.S.C. § 1396d(a)(13)

If this section is properly read to mean that the state of Vermont is required to take steps to maximally reduce the physical and mental disability of any child and restore her or him to the best possible functional level, those steps would still have to be medically necessary to achieve that goal. While this regulation may expand the scope of services offered to children, there is nothing in this regulation which expands or changes the medical necessity standard for Medicaid coverage. As always, the service or piece of equipment requested must be necessary for reaching the goal.

The credible evidence in this case unequivocally demonstrates that this particular mattress is not medically necessary for achieving a goal of restoring the best possible function to this child. This mattress is appropriate for the treatment of pressure ulcers, not a wet

environment. The goal in this case is to prevent a wet bed environment which could breakdown the child's skin and hampers his sleep and productivity. The Ninth Wave mattress is not medically necessary to meet that goal because his wetness can be treated effectively and efficiently by other more customary means. The medical necessity test, which is the touchstone of providing any services or equipment covered by the Medicaid program for children and adults, whether preventive or curative, was not met by the evidence presented in this case.

As the petitioner has not demonstrated that the item requested is medically necessary, the Department's action denying coverage for the Ninth Wave mattress was authorized by and consistent with its regulations and must be upheld by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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